

REMARKS

In the Office Action, the Examiner made final the restriction requirement. While Applicant still maintains that the restriction requirement was erroneous, Applicant has withdrawn Claims 1, 2, 4, 6-8 and 10 in order to expedite prosecution of this application. The withdrawal of these claims is made without prejudice to their being pursued in a properly filed divisional application. Additionally, Applicant notes that if a claim to the generic invention is allowed, claims to additional species dependent on the claim to the generic invention will also be allowed.

The Examiner then objected to the specification because the Title of the invention is allegedly not descriptive. While Applicant does not agree with this objection, Applicant has amended the Title of the invention under 37 C.F.R. §1.121(b)(1). The Title of the invention now recites “Container Cover For Use With Different Sized or Shaped Containers”. Therefore, Applicant respectfully requests removal of this ground of objection.

The Examiner also objected to Claims 3, 5, 9 and 11 because Claim 3 recites the phrase “a cover plate having a rear surface for contacting a container” which the Examiner alleges is not illustrated in the elected Figures 8-10. In response, Applicant has deleted the offending phrase from Claim 3. Therefore, Applicant respectfully requests removal of this ground of objection.

Turning to substantive matters, the Examiner rejected Claims 3, 5, 9 and 11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,857,853 to McMann (“McMann”). In response, Applicant avers that the Examiner has misconstrued the present invention. More particularly, the present invention’s structure and formation allows it to be used with containers of any size or shape. *See, e.g.*, published application

at ¶ [0001] (“The present invention relates to a container cover, and more particularly, to a container cover which can be applied to a container irrespective of the type or size of the container.”) (emphasis added). In contrast, the container cover of McMann must be specifically formed for each type of container to be covered. *See* McMann at p. 2, lines 61-69 (noting that the container of Fig. 3 requires a differently shaped container cover to “accommodate the closure of the container...of somewhat different form from the container...of Fig.2”).

Notwithstanding, Applicant has amended Claim 3 to recite that the annular contacting portion is formed along a peripheral portion of both fixing portions. No new matter is added by this amendment, and support can be found in Figs. 8-10 as well as in the published application at ¶ [0063]. Because McMann requires that the bottom flange 22¹ be connected only to the middle flange 21 and not to the top flange 20², and because the present invention requires that the contact portion 22 be connected to both fixing portions (*i.e.*, flanges), McMann cannot anticipate the present invention.

Additionally, the present invention specifically requires that the contact portion 22 be bent towards the second surface of the cover plate. In contrast, McMann requires that its bottom flange 22 be “beveled or flared outwardly...to facilitate its application to the container”. *See* McMann at p. 2, lines 9-11 (emphasis added). If McMann’s bottom flange 22 were bent towards the second surface, it would be flaring inwardly, as opposed to McMann’s “outwardly” requirement. Therefore, because the present invention requires that the contact portion be bent towards the second surface of the cover plate, and because McMann requires that it flare outwards, McMann cannot anticipate the

¹ Similar to the present invention’s contact portion 22.

² *See, e.g.*, Fig. 2.

present invention. Therefore, Applicant respectfully requests removal of this ground of rejection.

Based on the above, Applicant respectfully submits that the claims of the present invention are in proper form for allowance. Favorable consideration and early allowance are therefore respectfully requested and earnestly solicited.

Respectfully submitted,

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